

August 2, 2013

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Ex Parte Presentation
GN Docket No. 12-268; WT Docket No. 12-269

Dear Ms. Dortch:

Attached on behalf of T-Mobile US, Inc. is a paper prepared by Professor Jonathan Baker of American University's Washington College of Law, entitled "Further Comments on Spectrum Auction Rules That Foster Mobile Wireless Competition." Prof. Baker's paper responds to two papers submitted by AT&T in the above-captioned proceedings – a Comment on the recent submission by the Department of Justice and a Supplemental Reply Declaration on spectrum aggregation policy – both prepared by Professors Michael Katz and Philip Haile, and Drs. Mark Israel and Andreas Lerner ("KHIL").^{1/}

As Prof. Baker explains, reasonable spectrum aggregation limits in auctions would foster mobile wireless competition^{2/} and KHIL's arguments to the contrary are flawed. In particular, Prof. Baker demonstrates that:

- KHIL's conclusion that a foreclosure strategy is very unlikely incorrectly presumes that smaller mobile wireless providers could and would provide a comparable competitive constraint for the two largest providers if limited to high-frequency spectrum. In fact, if smaller carriers are limited to high-frequency spectrum, they may build out differently or

^{1/} See Michael L. Katz, Philip A. Haile, Mark A. Israel, and Andreas V. Lerner, "Comment on the Submission of the U.S. Department of Justice Regarding Auction Participation Restrictions" (June 13, 2013) and Michael L. Katz, Philip A. Haile, Mark A. Israel, and Andreas V. Lerner, "Comments on Appropriate Spectrum Aggregation Policy with Application to the Upcoming 600 MHz Auction" (June 13, 2013), *attached to* Letter from David L. Lawson, Sidley Austin LLP, Counsel to AT&T, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268, WT Docket No. 12-269 (filed June 13, 2013).

^{2/} Prof. Baker has previously explained the rationale and competitive benefits of reasonable aggregation limits for auctions. See Jonathan B. Baker, "Spectrum Rules That Foster Mobile Wireless Competition" (March 12, 2013) ("Baker Submission"), *attached to* Letter from Howard J. Symons, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-269 (filed March 12, 2013).

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

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offer more “targeted” service that imposes less of a competitive constraint on the two largest incumbents.

- KHIL inappropriately focuses on the possibility that spectrum aggregation limits could hinder large incumbents’ abilities to realize production efficiencies rather than on the dangers that spectrum aggregation limits address: that the largest two incumbent firms could foreclose rivals from access to spectrum, and thereby relax the existing competitive constraint those rivals impose on the largest two firms, resulting potentially in higher prices, decreased investment and innovation, and lower service quality.
- KHIL’s proposal to combine safe harbors announced in advance with case-by-case review of spectrum acquisitions after auction fails to take into account the complexity of auctions and improperly assumes that the cost of introducing uncertainty through post-auction review would be outweighed by the potential for greater precision in evaluating the competitive consequences of spectrum transfers.
- KHIL’s assertions that using spectrum aggregation limits for auctions and case-by-case reviews for secondary transactions will create opportunities for arbitrage are wrong and in any case will not likely occur.

Pursuant to Section 1.1206 of the Commission’s rules, an electronic copy of this letter is being filed electronically with the Office of the Secretary.

Please contact the undersigned if there are any questions regarding the foregoing.

Sincerely,

A handwritten signature in black ink, appearing to read "Howard J. Symons", with a stylized flourish at the end.

Howard J. Symons

Attachment

cc: Ruth Milkman
Louis Peraertz
David Goldman
Courtney Reinhard
Steve Wildman
Evan Kwerel
Gary Epstein